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KCG AMERICAS LLC and  
KCG HOLDINGS, INC.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

KCG AMERICAS LLC, a Delaware  
limited liability company, and KCG  
HOLDINGS, INC., a Delaware  
corporation,

Plaintiffs,

v.

ZHENGQUAN ZHANG, an individual,  
Defendant.

Case No. 5:17-cv-1953

**COMPLAINT FOR:**

- (1) **VIOLATION OF THE DEFEND**  
**TRADE SECRETS ACT;**
- (2) **VIOLATION OF THE**  
**FEDERAL COMPUTER**  
**FRAUD AND ABUSE ACT;**
- (3) **VIOLATION OF THE**  
**CALIFORNIA UNIFORM**  
**TRADE SECRETS ACT;**
- (4) **BREACH OF CONTRACT;**
- (5) **BREACH OF THE IMPLIED**  
**COVENANT OF GOOD FAITH**  
**AND FAIR DEALING;**
- (6) **VIOLATION OF CALIFORNIA**  
**PENAL CODE § 502; AND**
- (7) **VIOLATION OF CALIFORNIA**  
**BUSINESS & PROFESSIONS**  
**CODE § 17200, ET SEQ.**

Plaintiffs KCG AMERICAS LLC (“KCG”), a Delaware limited liability  
corporation, and KCG HOLDINGS, INC. (“KCG HOLDINGS”), a Delaware

1 corporation, (collectively, “Plaintiffs”) complain and allege against Defendant  
2 ZHENGQUAN ZHANG (“Defendant”) as follows:

3 **I. PARTIES, JURISDICTION, AND VENUE**

4 1. KCG HOLDINGS is a publicly-traded holding company incorporated  
5 under the laws of the State of Delaware with its principal place of business in Jersey  
6 City, New Jersey. KCG Holdings is the indirect parent of KCG.

7 2. KCG is a Delaware limited liability company with its principal place  
8 of business in New York, New York.

9 3. Defendant is a Chinese national residing in Santa Clara, California  
10 pursuant to an H-1B visa.

11 4. Pursuant to 28 U.S.C. § 1331, this Court has original subject-matter  
12 jurisdiction over Plaintiffs’ first and second causes of action for violations of the  
13 Defend Trade Secrets Act and 18 U.S.C. § 1030, respectively. Additionally, this  
14 Court has subject-matter jurisdiction over Plaintiffs’ remaining causes of action  
15 under 28 U.S.C. § 1367.

16 5. Pursuant to 28 U.S.C. § 1391(b)(1), venue is proper in this district  
17 because Defendant resides in Santa Clara, California.

18 **II. FACTUAL ALLEGATIONS**

19 6. KCG is a financial institution registered with the Securities and  
20 Exchange Commission and with the Financial Industry Regulatory Authority. KCG  
21 is in the business of trading securities and is one of the world’s largest independent  
22 market makers. KCG’s U.S. customer market-making business is hereinafter  
23 referred to as the “Market-Making Business.”

24 7. Plaintiffs write and deploy computer code and algorithmic models for  
25 their trading systems on a Unix-based operating system (“Unix System”).  
26 Plaintiffs’ computer source code and market-making algorithms (“Confidential  
27 Information”) are highly confidential and constitute some of Plaintiffs’ most  
28 valuable trade secrets.

1           8.     Plaintiffs protect their Confidential Information by, among other  
2 things, creating user names and passwords for access to their systems and by  
3 restricting access based on entitlements that are tied to employees' user names and  
4 passwords. Plaintiffs also require their employees to sign numerous agreements and  
5 adhere to company policies in which their employees promise to keep Plaintiffs'  
6 Confidential Information confidential. Plaintiffs do not permit their employees to  
7 utilize external e-mail or file sharing websites on their work computers. Plaintiffs  
8 further do not permit their employees to download data from their work computers  
9 to USB drives or other portable storage devices. Within the Unix System, Plaintiffs  
10 maintain certain code repositories and file directories, including for the Market-  
11 Making Business, that are not generally accessible except to those employees  
12 whose user credentials are entitled for more restricted access.

13           9.     Defendant ZHENGQUAN ZHANG ("Defendant") was hired by  
14 Knight Equity Markets, L.P. ("Knight")<sup>1</sup>, the predecessor company of KCG, as a  
15 Technical Operations Support person on March 29, 2010 and worked for KCG  
16 thereafter (hereinafter, "KCG" shall include Knight). On March 27, 2017,  
17 Defendant was placed on administrative leave, and on April 7, 2017, his  
18 employment was terminated.

19           10.    As a condition of his employment with KCG, Defendant signed an  
20 offer letter from KCG (the "Offer Letter") on February 24, 2010. In doing so,  
21 Defendant "acknowledge[d] and confirme[d] that all source code or other  
22 information... developed or used by [Defendant], [Knight or affiliates of Knight]  
23 during [his] employment at Knight and/or owned or licensed by [Knight or its  
24 affiliates], is deemed the confidential information and trade secrets of [Knight and  
25 its affiliates] and may not be used by [Defendant] outside of [his] employment at  
26 Knight or after [his] departure from the Company."

27 \_\_\_\_\_  
28 <sup>1</sup> On July 1, 2013, Knight Capital Group, Inc., the parent company of Knight Equity Markets, L.P., merged with  
GETCO Holding Company to form KCG Holdings, Inc. As used herein, the terms "KCG" and "KCG Holdings"  
include their respective predecessors.

11. Defendant also agreed to be bound by the terms and conditions of Exhibit A to the Offer Letter, titled “Applicable Restrictive Covenants to Offer Letter to Zhengquan Zhang.” Exhibit A contained a provision that stated: “You agree not to engage in any unauthorized use or disclosure of the Company’s Confidential Information.... You further agree to use the Company’s Confidential Information and other benefits of your employment to further the business interests of the Company.... You further agree not to use the Company’s Confidential Information or any document or record concerning the business and affairs of the Company (‘Company Record’) for any purpose without prior written authorization of an officer of the Company, except that you may use Confidential Information and Company Records to perform your duties.”

12. On March 29, 2010, Defendant signed an “Acknowledgment by Employee and Director” form, which was attached to the “Code of Business Conduct and Ethics.” By signing the “Acknowledgment by Employee and Director” form, Defendant acknowledged that he had “read the Code of Business Conduct and Ethics” and that he “understand[s] and agree[s] to abide by its requirements.”

13. The Code of Business Conduct and Ethics required Defendant to “maintain the confidentiality of confidential information entrusted to [him] by the Company..., except when disclosure is authorized by the Legal and Compliance Department or required by laws or regulations.”

14. On April 27, 2010, Defendant signed an “Acknowledgment and Disclaimer” wherein he acknowledged that he had received “th[e] Employee Handbook (‘Handbook’) of Knight Capital Group, Inc. and its subsidiaries” and that he understood that his “employment [was] governed by the policies described in th[e] Handbook.”

15. The Handbook to which Defendant agreed to be bound stated: “The Company has an interest in protecting the Company and those with whom it does

1 business, and any concern regarding proprietary information should be reported  
2 promptly to any supervisor.... Given the nature of the Company's business,  
3 protecting proprietary and confidential information is of vital concern to the  
4 Company. Such information is one of the most important assets of the Company as  
5 it enhances the Company's opportunities for continued growth. Employees must  
6 not disclose to third parties any proprietary and confidential information obtained  
7 during their employment with the Company or use such information for purposes  
8 not related to their employment."

9 16. Additionally, the Handbook stated: "Company property includes not  
10 only tangible property, such as desks, typewriters and computers, but also  
11 intangible property such as business data, formulas and information. Of particular  
12 importance is proprietary information and confidential information. Proprietary  
13 information includes all information, including intellectual property or trade secrets,  
14 obtained or created by employees in the course of their work for the Company.  
15 Confidential information is any Company information that is not known generally  
16 to the public or the industry . . . [A]lgorithms, information concerning algorithms, .  
17 . . process and procedure descriptions, research plans, computer systems, and trade  
18 secrets are examples of confidential information. Given the nature of the  
19 Company's business, protecting proprietary and confidential information is of vital  
20 concern to the Company. Such information is one of the most important assets of  
21 the Company as it enhances the Company's opportunities for continued growth.  
22 Employees must not disclose to third parties any proprietary and confidential  
23 information obtained during their employment with the Company or use such  
24 information for purposes not related to their employment. In addition, all  
25 employees are expected to observe good security practices, and keep proprietary  
26 and confidential information secure from outside visitors and all other persons who  
27 do not have a legitimate reason to see or use such information. Any Company  
28 procedures regarding document control, restricted access to files, and other such

1 procedures are to be strictly observed. Failure to adhere to the Company's policies  
2 regarding proprietary and confidential information is considered grounds for  
3 discipline, up to and including termination. . . Employee's obligations concerning  
4 proprietary and confidential information extend beyond the length of employment.  
5 Upon termination of employment, whether voluntary or involuntary, an employee is  
6 prohibited from utilizing any confidential or propriety information obtained or  
7 created during the course of their employment with Knight."

8 17. In 2012, Defendant completed an employee certification ("Employee  
9 Certification"). In that Employee Certification, Defendant "acknowledge[d] that [he  
10 had] read, underst[ood], complied with and agree[d] to abide by Knight's  
11 [Confidential Information] and Invention Assignment Agreement."<sup>2</sup>

12 18. The Confidential Information and Invention Assignment Agreement  
13 stated: "At all times during the term of my employment and thereafter, I will hold  
14 in the strictest confidence, and not use, except for the benefit of the Company, or to  
15 disclose to any person, firm or corporation without written authorization any  
16 Confidential Information."

17 19. Defendant also agreed to the terms and conditions of KCG's May 2011  
18 Restricted Stock Unit Agreement, which KCG provided to a number of its  
19 employees. Restricted Stock Unit Agreements are not agreed to by manually  
20 signing a document. Instead, Restricted Stock Unit Agreements are agreed to by  
21 accepting the stock award. Defendant accepted such a stock award on May 25,  
22 2011.

23 20. The May 2011 Restricted Stock Unit Agreement required Defendant  
24 "not to engage in any unauthorized use or disclosure of the Company's Confidential  
25 Information...."

26  
27  
28 <sup>2</sup> The Employee Certification erroneously identified the Confidential Information and Invention Assignment Agreement as the "Confidentiality and Invention Assignment Agreement."

1           21. From the date he was hired until December 1, 2016, Defendant's  
2 access to KCG's Unix System, known as "Unix Entitlements," was limited to those  
3 areas relevant to his role as a Trading Operations Specialist.

4           22. However, on December 1, 2016, Defendant's Unix Entitlements were  
5 elevated to "root access," so that he could assist KCG's Infrastructure Department  
6 with an ongoing data center migration.

7           23. With "root access," Defendant could access areas of the Unix System  
8 that were previously inaccessible to him, including the restricted code repositories  
9 and file directories of the Market-Making Business.

10          24. KCG employs a Microsoft Windows-based operating system  
11 ("Windows System") for email and other applications. Defendant was given a user  
12 name and password to access the Windows System. The elevation of Defendant's  
13 Unix Entitlements did not increase his privileges on the Windows System.

14          25. On March 26, 2017, a KCG employee reported to KCG's Network  
15 Security Team concerns that his e-mail had been compromised.

16          26. KCG's Network Security Team began reviewing the circumstances  
17 giving rise to the employee's concerns and observed that the suspected compromise  
18 was occurring through a computer assigned to Defendant.

19          27. KCG's Network Security Team thereafter took steps to restrict  
20 Defendant's access to KCG's Windows System.

21          28. On March, 27, 2017, Defendant e-mailed his superiors at KCG. In his  
22 e-mail, Defendant admitted that he had obtained other employees' user names and  
23 passwords and logged into those employees' desktops without authorization.  
24 Defendant further stated in his e-mail that his Windows account had been  
25 terminated. Additionally, Defendant stated, "I take full responsibility of what I did."

26          29. KCG later learned that Defendant had deleted history files and some of  
27 his directories, and that KCG's building access log showed that Defendant entered  
28 the office the night of Sunday, March 26, 2017. On information and belief, it was



1 that night, after Defendant learned that he had been denied access to the Windows  
2 System, that he deleted the files and directories.

3 30. Using its system back-up directories and the files contained therein,  
4 Plaintiffs were able to determine that Defendant had copied Confidential  
5 Information from the Unix System and, it appears, from the Windows System and  
6 transmitted the copied Confidential Information to at least two third-party, web-  
7 based repositories, known as GitLab Inc. and GitHub, Inc. (collectively, the  
8 “Repositories”). Defendant also had log-in information for a third repository,  
9 known as Bitbucket, which, upon information and belief, is owned and/or operated  
10 by Atlassian, Inc.

11 31. The files in the system back-up directories also showed that  
12 Defendant’s surreptitious activities began in mid-December of 2016 and included  
13 writing computer programs that copied and transmitted the Confidential  
14 Information on numerous occasions.

### 15 **FIRST CAUSE OF ACTION**

#### 16 **(Violation of the Defend Trade Secrets Act)**

17 32. Plaintiffs incorporate by reference Paragraphs 1 through 31 as though  
18 fully set forth in this cause of action.

19 33. Plaintiffs’ Confidential Information constituted and constitutes a “trade  
20 secret” under 18 U.S.C. § 1839(3) because it was, and is, technical information that  
21 Plaintiffs took reasonable measures to keep secret, including having KCG’s  
22 employees, including Defendant, sign numerous agreements and adhere to company  
23 policies preventing KCG employees from disclosing Plaintiffs’ Confidential  
24 Information to persons outside KCG and restricting access to the Confidential  
25 Information. Moreover, Plaintiffs derive independent economic value from their  
26 Confidential Information because the Confidential Information provides Plaintiffs  
27 with a competitive advantage in their industry.  
28



1           34. Plaintiffs were the “owners” of the Confidential Information, as  
2 defined by 18 U.S.C. § 1839(4), because Plaintiffs had rightful legal title to the  
3 Confidential Information.

4           35. Plaintiffs utilize their Confidential Information to make markets on  
5 securities exchanges and otherwise around the world. The Confidential Information  
6 is, therefore, used in interstate and foreign commerce.

7           36. At no point did Plaintiffs expressly or by implication consent to  
8 Defendant copying the Confidential Information and transmitting to the  
9 Repositories the Confidential Information.

10           37. Defendant misappropriated Plaintiffs’ Confidential Information  
11 because he (1) stole Plaintiffs’ Confidential Information when he, without  
12 authorization, accessed, copied, and transmitted to the Repositories Plaintiffs’  
13 Confidential Information and (2) did so in direct violation of Defendant’s duty to  
14 maintain confidentiality, as codified in Defendant’s Offer Letter, May 2011  
15 Restricted Stock Unit Agreement, and other agreements to follow the Plaintiffs’  
16 policies regarding confidentiality.

17           38. Defendant’s conduct has proximately caused Plaintiffs to suffer  
18 damages in an amount to be proven at trial.

19           39. Moreover, because Defendant remains in possession of Plaintiffs’  
20 Confidential Information, Plaintiffs are entitled to and seek, pursuant to 18 U.S.C. §  
21 1836(b)(2), a civil seizure of the property necessary to prevent the further  
22 propagation or dissemination of Plaintiffs’ Confidential Information.

23                           **SECOND CAUSE OF ACTION**

24                           **(Violation of the Federal Computer Fraud and Abuse Act,**  
25   **18 U.S.C. § 1030)**

26           40. Plaintiffs incorporate by reference Paragraphs 1 through 39 as though  
27 fully set forth in this cause of action.  
28

1           41. Defendant knowingly caused the transmission of Plaintiffs'  
2 Confidential Information when he, without authorization, accessed, copied and  
3 transmitted Plaintiffs' Confidential Information to the Repositories.

4           42. The computers of KCG constituted and constitute "protected  
5 computers" under 18 U.S.C. § 1030(e)(2)(B) because KCG's computers were and  
6 are connected to the internet.

7           43. In accessing and transmitting the Confidential Information, Defendant  
8 intentionally or recklessly caused damage to Plaintiffs.

9           44. As a direct and proximate result of Defendant's violation of the  
10 Federal Computer Fraud and Abuse Act, Plaintiffs have suffered damages in an  
11 amount to be proven at trial.

12                               **THIRD CAUSE OF ACTION**

13                               **(Violation of the California Uniform Trade Secrets Act,**  
14                               **Cal. Civ. Code § 3426, *et seq.*)**

15           45. Plaintiffs incorporate by reference Paragraphs 1 through 44 as though  
16 fully set forth in this cause of action.

17           46. Plaintiffs' Confidential Information constituted and constitutes a "trade  
18 secret" under Cal. Civil Code § 3426.1(d) because it was, and is, technical  
19 information that Plaintiffs took reasonable measures to keep secret, including  
20 having KCG's employees, including Defendant, sign agreements preventing KCG  
21 employees from disclosing Plaintiffs' Confidential Information to persons outside  
22 KCG and restricting access to its Confidential Information. Moreover, Plaintiffs  
23 derive independent economic value from their Confidential Information because the  
24 Confidential Information provides Plaintiffs with a competitive advantage in their  
25 industry.

26           47. Plaintiffs are the owners of the Confidential Information because  
27 Plaintiffs had rightful legal title to the Confidential Information.  
28

1           48. At no point did Plaintiffs expressly or by implication consent to  
2 Defendant copying the Confidential Information and uploading to the Repositories  
3 the Confidential Information.

4           49. Defendant misappropriated Plaintiffs' Confidential Information  
5 because he (1) stole Plaintiffs' Confidential Information when he, without  
6 authorization, copied and transmitted to the Repositories Plaintiffs' Confidential  
7 Information and (2) did so in direct violation of Defendant's duty to maintain  
8 confidentiality, as codified in Defendant's numerous agreements with KCG.

9           50. As a direct and proximate result of Defendant's misappropriation,  
10 Plaintiffs have suffered damages in an amount to be proven at trial.

11           51. Pursuant to Cal. Civil Code § 3426.3(c), Plaintiffs seek exemplary  
12 damages in the amount not exceeding twice any award made for actual loss or  
13 unjust enrichment caused by Defendant's misappropriation because Defendant's  
14 theft of Plaintiffs' Confidential Information constitutes willful and malicious  
15 misappropriation.

16           52. Moreover, pursuant to Cal Civil Code § 3426.4, Plaintiffs seek an  
17 award of their reasonable attorneys' fees and costs because Defendant's theft of  
18 Plaintiffs' Confidential Information constitutes willful and malicious  
19 misappropriation.

20           53. Finally, because Defendant remains in possession of Plaintiffs'  
21 Confidential Information, Plaintiffs are entitled to and seek, pursuant to Cal. Civil  
22 Code § 3426.2, an injunction preventing Defendant from further propagating or  
23 disseminating Plaintiffs' Confidential Information.

24                           **FOURTH CAUSE OF ACTION**

25                           **(Breach of Contract on behalf of KCG)**

26           54. KCG incorporates by reference Paragraphs 1 through 53 as though  
27 fully set forth in this cause of action.  
28



64. Defendant's breach of the implied covenant of good faith and fair dealing directly and proximately caused KCG to suffer injury and damages in an amount to be proven at trial.

#### **SIXTH CAUSE OF ACTION**

##### **(Violation of California Penal Code § 502)**

65. Plaintiffs incorporate by reference Paragraphs 1 through 64 as though fully set forth in this cause of action.

66. Defendant knowingly and without permission accessed and used the computers of Plaintiffs in violation of Cal. Penal Code § 502(c)(3) and (7).

67. Defendant also knowingly caused the transmission of Plaintiffs' Confidential Information when he, without authorization, copied and transmitted to the Repositories Plaintiffs' Confidential Information.

68. As a direct and proximate result of Defendant's violation of Cal. Penal Code § 502, Plaintiffs have suffered damages in an amount to be proven at trial.

#### **SEVENTH CAUSE OF ACTION**

##### **(Violation of California Business & Professions Code § 17200)**

69. Plaintiffs incorporate by reference Paragraphs 1 through 68 as though fully set forth in this cause of action.

70. Defendant's acts and practices as described herein are unlawful, unfair, and/or fraudulent, in violation of the Unfair Competition Law, California Business and Professions Code §17200 *et seq.*

71. Specifically, Defendants' acts were unlawful because Defendant violated 18 U.S.C. § 1030 and Cal. Penal Code § 502.

72. Additionally, Defendant's acts were unfair because by copying and transmitting to the Repositories Plaintiffs' Confidential Information, Defendant intentionally endangered Plaintiffs by subjecting them to trade secret misappropriation, loss in the value of their Confidential Information, and lost profit opportunities if others are able to replicate Plaintiffs' trading strategies.

73. Finally, Defendant's acts were fraudulent because Defendant, despite being contractually obligated to maintain the confidentiality of Plaintiffs' Confidential Information and with full knowledge that his conduct was not permitted, copied and transmitted to the Repositories Plaintiffs' Confidential Information.

74. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent actions, Defendant, on information and belief, has wrongfully profited. Therefore, Plaintiffs seek restitution and disgorgement of all amounts obtained by Defendant as a result of his misconduct alleged herein.

75. Moreover, because Defendant remains in possession of Plaintiffs' Confidential Information, Plaintiffs are entitled to and seek an injunction preventing Defendant from further propagating or disseminating Plaintiffs' Confidential Information.

### PRAYER FOR RELIEF

**WHEREFORE**, relief is prayed for as follows:

**On the First Cause of Action, Plaintiffs seek:**

1. A civil seizure of the property necessary to prevent the further propagation or dissemination of Plaintiffs' Confidential Information;

**On the Third Cause of Action, Plaintiffs seek:**

2. Exemplary damages in an amount sufficient to deter Defendant from further engaging in fraudulent conduct;
3. An award of Plaintiffs' reasonable attorneys' fees and costs;

**On the First, Third, and Seventh Causes of Action, Plaintiffs seek:**

4. An injunction preventing Defendant from further disseminating Plaintiffs' Confidential Information;

**On the Fourth and Fifth Causes of Action, KCG seeks:**

5. Damages in an amount to be proven at trial;

6. Costs of suit incurred herein and reasonable attorneys' fees as permitted by law; and

7. Such other and further relief as the Court may deem just and proper.

**On the Seventh Cause of Action, Plaintiffs seek:**

8. Restitution and disgorgement of all amounts obtained by Defendant as a result of his misconduct alleged herein;

**On the First, Second, and Third Causes of Action, Plaintiffs seek:**

9. Damages in an amount to be proven at trial;

10. Costs of suit incurred herein and reasonable attorneys' fees as permitted by law; and

11. Such other and further relief as the Court may deem just and proper.

Dated: April 7, 2017

BAKER & HOSTETLER LLP

By: /s/Matthew D. Pearson

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Matthew D. Pearson

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